

CITY OF TIGARD, OREGON

RESOLUTION NO. 05- 55

A RESOLUTION AND FINAL ORDER APPROVING THE TIGARD FIRST BAPTIST CHURCH CONDITIONAL USE PERMIT (CUP) 2004-00005/SENSITIVE LANDS REVIEW (SLR) 2005-00005/SENSITIVE LANDS REVIEW (SLR) 2005-00006 AND ADJUSTMENT (VAR) 2005-00016, ADOPTING FINDINGS AND IMPOSING CONDITIONS.

WHEREAS, the Tigard Hearings Officer reviewed this case at a public hearing at his meeting of April 25, 2005; and

WHEREAS, the Hearings Officer adopted findings approving the requested conditional use permit and sensitive lands permits, subject to additional conditions of approval; and

WHEREAS, the Hearings Officer adopted findings denying the requested adjustment to access spacing standards; and

WHEREAS, an appeal was filed on May 25, 2005 by the owner and applicant, on the basis that the Hearings Officer misconstrued the applicable law; and

WHEREAS, the City Council held a public hearing on the appeal of the approval on July 12, 2005; and

WHEREAS, the City Council on July 12, 2005 continued the public hearing on the appeal of the approval, and extended the 120-day rule to August 17, 2005 upon motion of the applicant; and

WHEREAS, the City Council on July 26, 2005 reviewed the testimony, submittals, and staff report, and reviewed findings and conditions of approval that were contained within the Hearings Officer's final order; and

WHEREAS, the City Council agreed that Condition #30 should be modified as described in Exhibit A, to require an emergency access to SW Gaarde as requested by TVFR; and

WHEREAS, the City Council concluded that the appeal demonstrated that errors in the Hearings Officer's decision occurred and that the applicant's requested adjustment to the access spacing requirement to allow a limited public use access to SW Gaarde Street was supported by substantial evidence in the record; and

WHEREAS, the City Council agreed that Condition #30 should be modified as described in Exhibit A, to permit a public use access to SW Gaarde Street limited to Saturday evenings, Sundays, and Christmas Eve and Good Friday as observed by the Tigard First Baptist Church;

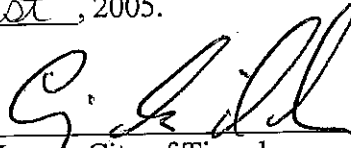
NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council approves applications CUP 2004-00005/SLR2005-00005/SLR2005-00006 and VAR2005-00016 - First Baptist Church of Tigard -subject to the conditions of approval stated in the Hearings Officer's final order dated May 12, 2005, attached hereto as Exhibit C and incorporated herein by this reference with the exception of the changes to Condition #30, attached hereto as Exhibit A, to reflect the requirements for an emergency and limited public use access to be provided to SW Gaarde.

SECTION 2: The Tigard City Council adopts the findings and analysis stated in the Hearings Officer's final order, attached hereto as Exhibit C and incorporated herein by reference, with the exception of Paragraphs C.3, D and E in the Hearings Officer's final order. The City Council adopts the findings and analysis of the amended Paragraphs C.3, D and E, attached hereto as Exhibit B and incorporated herein by reference.

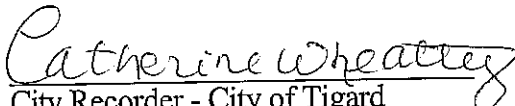
SECTION 3: This resolution is effective immediately upon passage.

PASSED: This 23rd day of August, 2005.



Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard

RESOLUTION No. 05-55
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Text Amendment to Condition Number 30
Casefile CUP2004-00005, Tigard First Baptist Church Expansion

Original Text:

30. The existing driveway on Gaarde shall be removed prior to final inspection on Phase 1.

Amendment:

30. The existing driveway on Gaarde shall be removed prior to final inspection on Phase 1. A restricted emergency access from SW Gaarde Street to the lower parking area shall be constructed as required by Tualatin Valley Fire & Rescue. Appropriate measures (e.g. Knox box locked gate) shall be incorporated to prevent general public use of this access. This access also may be used by the public in conjunction with church services, and may be opened only from 4:00 pm Saturdays until 9:00 pm Sundays, from 4:00 pm Christmas Eve until 1:00 am Christmas Day, and from 4:00 pm Good Friday until 1:00 am the day following (as observed by Tigard First Baptist Church).

Text Amendment to Hearings Officer's Final Order
Casefile CUP2004-00005, Tigard First Baptist Church Expansion

Text as Amended:

C. DISCUSSION

3. The applicant requested an adjustment to the intersection spacing standards of TDC § 18.705.030.H.3 to allow driveway access to Gaarde Street.

a. TDC § 18.705.020.H.3 requires a minimum 600 feet between driveway and street intersections on arterials such as Gaarde Street. The applicant's existing Gaarde Street access is located roughly 80 feet from the intersection of SW 110th Avenue and SW Gaarde Street. The applicant proposed to close the existing access and construct a new driveway onto Gaarde Street located roughly 220 feet west of the 110th Avenue/SW Gaarde Street intersection.

b. TDC § 18.370.020.C.5 authorizes the City Council to approve an adjustment to the intersection spacing requirements if the application complies with the approval criteria of TDC § 18.370.020.C.5.b. In this case, the Council found that the applicant bore the burden of proof and showed that the application complies with TDC § 18.370.020.C.5. The Council finds there is no alternative access available to the site from SW 110th Avenue because the site already has an existing access from SW 110th Avenue. The Council finds that a street with an existing access cannot be an alternative access.

c. Prohibiting access to Gaarde Street will increase the traffic volume and congestion on 110th Avenue and the proposed site driveways, since all vehicles must use the driveways onto this street to enter and leave the site. The additional traffic and congestion will likely be perceptible to area residents and church members, and, although it will not exceed the capacity of streets, the additional traffic will make the intersection of SW 110th Avenue and Gaarde Street more hazardous, based on Mr. Charboneau's expert testimony.

i. Mr. Charboneau testified to the Hearings Officer that elimination of the Gaarde Street driveway will cause "several detriments . . ."¹ He testified to the City Council that it will be more hazardous for church members to leave the site through the SW 110th Avenue/Gaarde Street intersection than to leave the site using the proposed driveway on Gaarde Street. He testified there is inadequate sight distance to the east at the SW 110th Avenue/Gaarde Street intersection, and there is adequate sight distance to the east at the proposed driveway on Gaarde Street.

d. The proposed parking lot design without access to Gaarde Street will create a long dead-end parking lot and vehicle access way. This dead-end access way will increase emergency response times and restrict emergency vehicle access to certain portions of the site. The City Council finds that the applicant shall be required to provide an emergency vehicle access to Gaarde Street as required by the Tualatin Valley Fire District. A condition of approval is warranted to that effect.

e. The fact that the Church will generate the majority of its traffic on Saturday evenings and Sundays, when traffic volumes on Gaarde Street are lower, is relevant to the approval criterion in TDC § 18.370.020.C.5.b(5), because use of the proposed Gaarde Street access for church services only

¹ He testified that closure of the Gaarde Street driveway, will cause "[a]dditional impacts to the [110th Avenue/Gaarde Street] intersection and 110th Avenue . . . longer delays in accessing the site . . . emergency vehicles will need to undertake a longer route . . . [and] the residential neighborhood . . . will experience additional traffic circulation and impacts."

EXHIBIT B

will result in safer access. A condition of approval restricting that access to Saturday evenings, Sundays, Christmas Eve, and Good Friday, is warranted to that effect.

f. The existence of other driveways on Gaarde Street that do not meet the intersection spacing requirements is irrelevant. The City has no authority to close existing nonconforming driveways. However, the City can require that the applicant close its existing Gaarde Street driveway when its proposed new Gaarde Street driveway is installed.

D. CONCLUSIONS

The City Council concludes that the proposed conditional use permit and sensitive lands reviews do or can comply with the applicable approval criteria and standards of the Tigard Community Development Code, provided development that occurs after this decision complies with local, state, and federal laws and with conditions of approval warranted to insure such compliance occurs. The Council further finds that the adjustment complies with the applicable approval criteria and is approved. The decision of the Hearings Officer denying the adjustment is reversed.

E. DECISION

The City Council hereby approves CUP 2004-00005, SLR 2005-00005 and SLR 2005-00006, and VAR 2005-00016 (Tigard First Baptist Church), subject to the following conditions of approval.

0514-010.FIN



120 DAYS = 8/3/2005 (Includes a 7-day extension)

DATE OF FILING: 5/12/2005

CITY OF TIGARD

Washington County, Oregon

NOTICE OF FINAL ORDER BY THE HEARINGS OFFICER

Case Numbers:	CONDITIONAL USE PERMIT (CUP) 2004-00005 SENSITIVE LANDS REVIEW (SLR) 2005-00005 SENSITIVE LANDS REVIEW (SLR) 2005-00006 DEVELOPMENT ADJUSTMENT (VAR) 2005-00016
Case Name:	FIRST BAPTIST CHURCH OF TIGARD
Name of Owner:	The First Baptist Church of Tigard
Name of Applicant:	Architect LA Attn: Larry Abell
Address of Applicant:	805 SE Sherman Street Portland, OR 97214
Address of Property:	11075 SW Gaarde Street Tigard, OR 97223
Tax Map/Lot Nos.:	Washington Co. Tax Assessor's Map No. 2S103DC, Tax Lot 1100

A FINAL ORDER INCORPORATING THE FACTS, FINDINGS AND CONCLUSIONS **APPROVING** A REQUEST FOR A CONDITIONAL USE PERMIT AND TWO SENSITIVE LANDS REVIEWS, AND **DENYING** THE REQUEST FOR AN ADJUSTMENT. THE CITY OF TIGARD HEARINGS OFFICER HAS REVIEWED THE APPLICANT'S PLANS, NARRATIVE, MATERIALS, COMMENTS OF REVIEWING AGENCIES, THE PLANNING DIVISIONS STAFF REPORT AND RECOMMENDATIONS FOR THE APPLICATION DESCRIBED IN FURTHER DETAIL IN THE STAFF REPORT. THE HEARINGS OFFICER HELD A PUBLIC HEARING ON **APRIL 25, 2005** TO RECEIVE TESTIMONY REGARDING THIS APPLICATION. THIS DECISION HAS BEEN BASED ON THE FACTS, FINDINGS AND CONCLUSIONS CONTAINED WITHIN THIS FINAL ORDER.

Request: ➤ The applicant is seeking Conditional Use Permit approval for a three-phased expansion. Phase 1 consists of new on site parking for 134 cars. No new access to SW Gaarde Street is proposed with this phase, but Sensitive Lands Reviews are required for the drainageway and step slopes present on site. Phase 2 consists of a new two-story 18,000 square foot multi purpose gymnasium building. With this phase, the 2,300 square foot "Bolt Hall" will be demolished and replaced by an additional 47 parking spaces. Phase 3 consists of a new two-story 4,450 square foot addition between the existing church and ministry buildings. This phase will also reconfigure the existing parking lot to provide access to the new addition, closing the existing access on Gaarde Street, and constructing a new access from Gaarde Street to the new parking lot in Phase 1. An Adjustment to the 600-foot access spacing standards is also required. **At the close of the record, the Hearings Officer held the record open for one week then approved the Conditional Use Permit and Sensitive Lands Reviews, subject to the conditions of approval within this final order; and denied the Adjustment request finding that the applicant failed to bear the burden of proof that the Adjustment complies with the applicable approval criteria.**

Zone: R-3.5: Low-Density Residential District. **Applicable Review Criteria:** Community Development Code Chapters 18.330, 18.360, 18.370, 18.390, 18.510, 18.705, 18.725, 18.745, 18.755, 18.765, 18.775, 18.780, 18.790, 18.795 and 18.810.

Action: ➤ ☐ Approval as Requested ☒ Approval with Conditions ☐ Denial

Notice: Notice was published in the newspaper and mailed to:
☒ Owners of Record Within the Required Distance ☒ Affected Government Agencies
☒ Interested Parties ☒ The Applicants and Owners

The adopted findings of fact and decision can be obtained from the Planning Division/Community Development Department at the City of Tigard City Hall.

Final Decision:

THIS DECISION IS FINAL ON MAY 12, 2005 AND BECOMES EFFECTIVE ON MAY 27, 2005 UNLESS AN APPEAL IS FILED.

Appeal: The decision of the Review Authority is final for purposes of appeal on the date that it is mailed. Any party with standing as provided in Section 18.390.040.G.1. may appeal this decision in accordance with Section 18.390.040.G.2. of the Tigard Community Development Code which provides that a written appeal together with the required fee shall be filed with the Director within ten (10) business days of the date the notice of the decision was mailed. The appeal fee schedule and forms are available from the Planning Division of Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon 97223.

THE DEADLINE FOR FILING AN APPEAL IS 5:00 PM ON MAY 26, 2005.

Questions: If you have any questions, please call the City of Tigard Planning Division at (503) 639-4171.

**BEFORE THE LAND USE HEARINGS OFFICER
FOR THE CITY OF TIGARD, OREGON**

Regarding an application by Larry Abel on behalf of the) **FINAL ORDER**
Tigard First Baptist Church for a conditional use permit)
and other approvals to expand an existing church at) **CUP 2004-00005¹**
11075 SW Gaarde Street in the City of Tigard, Oregon) **(Tigard First Baptist Church)**

A. SUMMARY

1. The applicant, Tigard First Baptist Church represented by Larry Abel, requests approval of a conditional use permit (CUP) for expansion of an existing church, located at 11075 SW Gaarde Street; also known as tax lot 01100, WCTM 2S103DC. The site is the southwest quadrant of the intersection of SW 110th Avenue and Gaarde Street. The site is zoned R-3.5 (Low Density Residential). The site is currently developed with a roughly 6630 square foot church, 3564 square foot ministry building and a 2300 square foot "Bolt Hall," 134 automobile parking spaces and landscaping. The applicant requests sensitive lands reviews for impacts to the drainageway and steep slopes on site. SLR2005-00005 and SLR2005-00006. The applicant proposes to construct a 22,500 square foot expansion of the existing church and associated parking in three phases.

a. In Phase 1 the applicant proposed to construct a new 134-space parking lot in the east and south portions of the site, including a new access to SW 110th Avenue.

b. In Phase 2 the applicant proposed to construct a new 4450 square foot two-story, addition between the existing church and ministry buildings, replacing a portion of the existing parking lot, reconfigure the existing parking lot to provide access to the new addition and relocate the existing driveway on Gaarde Street to the south.

c. In Phase 3 the applicant proposed to demolish "Bolt Hall" and construct a new 18,000 square foot two-story multi purpose gymnasium building southeast of the Phase 2 addition. The applicant will also construct an additional 47 parking spaces near the center of the site.

2. The applicant also requests an adjustment to reduce the 600-foot intersection spacing requirements on Gaarde Street to 130 feet to relocate an existing driveway.
VAR2005-00016.

3. City Hearings Officer Joe Turner (the "hearings officer") held a duly noticed public hearing regarding the application. City staff recommended that the hearings officer approve the CUP and Sensitive Lands Reviews, subject to conditions. Staff recommended the hearings officer deny the adjustment request. See the Staff Report to the Hearings Officer dated April 18, 2005 (the "Staff Report"). The applicant's representative accepted the findings and conditions of approvals recommended by City staff with certain

¹ This decision also addresses SLR2005-00005, SLR2005-00006 and VAR2005-00016.

exception. One person testified orally and in writing in support of the application. Two other persons testified orally with questions and concerns. The hearings officer held open the public record for one week to allow the applicant to submit a final argument. The principal disputed issues in this case include the following:

a. Whether the proposed development will generate excessive noise, lights, pollution and other impacts on abutting residential properties that cannot be adequately mitigated;

b. Whether the applicant sustained the burden of proof that the proposed adjustment to the intersection spacing requirements complies with the applicable approval criteria in TDC 18.370.020.C(5)(b); and

c. Whether the applicant can be required to ensure that adequate sight distance is available at the intersection of 110th Avenue and Gaarde Street.

4. In this final order, the hearings officer approves the conditional use permit and sensitive lands review based on the findings and conclusions provided and incorporated herein and subject to conditions at the end of this final order. The hearings officer denies the adjustment.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about this application on April 25, 2005. All exhibits and records of testimony are filed with the Tigard Department of Community Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the public hearing in this matter.

2. City planner Morgan Tracy summarized the Staff Report.

a. He noted that the applicant's narrative is inconsistent with the development and tree removal plans regarding which trees will be removed and retained. Condition of approval 4 require that the applicant submit a revised tree removal plan that clearly identifies which trees will be removed and retained. He noted that the applicant will plant additional trees and shrubs on the site, including 10 douglas fir trees within the stream buffer, which will enhance the existing stream buffer and mitigate impacts on abutting residents to the south.

b. He noted that there is an existing bike/pedestrian path easement on the southern portion of the site. The proposed development encroaches into a portion of the path. The applicant has proposed to dedicate a blanket pathway easement over the entire sensitive area to compensate for impacts to the existing path easement. However construction of a path within the sensitive area will impose additional costs on the City. Therefore the applicant should be required to retain the existing easement or obtain any required approvals and construct the portion of the pathway in the realigned easement.

c. He testified that the applicant did submit a lighting plan for the site. However staff have not had an opportunity to review the plan in detail. Therefore he requested the hearings officer retain condition of approval 3.

d. He testified that the proposed development does not provide enough off-street parking to comply with the Code. The applicant is required to provide 185 parking spaces and 6 ADA accessible spaces. The applicant should be required to demonstrate that adequate parking, including ADA accessible spaces, is available to accommodate each phase of the proposed development. This is required by condition 2.D.

e. He recommended the hearings officer deny the proposed adjustment to the intersection spacing requirements. He argued that adequate alternative access points available on 110th Avenue. Therefore the adjustment request does not comply with TDC 18.370.020.C(5)(b)(2).

f. He testified that the applicant is not required to provide a separate drainage tract.

g. He argued that the applicant should be required to demonstrate that adequate sight distance is available at the intersection of 110th Avenue and Gaarde Street. Proportionality is irrelevant to this safety issue.

h. He requested that the hearings officer allow emergency vehicle access to Gaarde Street if required by the Tualatin Valley Fire District.

3. Architect Larry Abel, civil engineer Carl Jensen, traffic engineer Frank Charbonneau and project manager Jim Wilson testified for the applicant.

a. Mr. Abel submitted a revised site plan dated April 25, 2005, with revised phasing. The applicant reversed proposed phases 2 and 3 to allow the applicant to construct the gymnasium first, as Phase 2. He accepted the findings and conditions of approval in the Staff Report with certain exceptions.

i. He testified that the applicant will retain the existing trail easement on the site. The applicant will revise the design of the lower parking lot to avoid impacts to the easement.

ii. He testified that the applicant will design the parking lots to ensure that a sufficient number of off-street parking spaces are available to serve the development proposed in each individual phase.

iii. He testified that the applicant will try to save as many existing trees on the site as possible. The applicant's engineer will review the design and location of the existing sanitary sewer line during final engineering to determine if it can accommodate the proposed expansion. However the applicant may need to lower the sewer line to serve the proposed development, which could impact trees within the sensitive area. The applicant will not remove trees or other vegetation within the stream buffer unless it is absolutely necessary. The applicant will also save as many trees as possible on the upland portion of the site. The applicant will plant additional trees throughout the site.

iv. He requested the hearings officer approve the adjustment to allow the applicant to maintain direct driveway access to Gaarde Street. The Gaarde Street driveway allows traffic generated by the church to disperse onto area streets, reducing the traffic impact on 110th Avenue and the adjacent residential neighborhood. The applicant will relocate the existing driveway to the south to improve the intersection spacing on this street. The site does not have enough frontage on Gaarde Street to comply with the 600-foot spacing requirement. The church generates traffic on Sunday mornings. It does not generate traffic during normal peak hours.

v. He requested that the hearings officer modify conditions of approval 13 and 29 to limit the applicant's duty to improve sight distance at the intersection of 110th Avenue and Gaarde Street to removal of obstructions on the site or within the public right of way. The applicant has no control over the properties north of the intersection and has no right to remove vegetation or structures on private property that may limit sight distance at this intersection.

vi. He testified that the applicant will treat and detain stormwater within a portion of the site. The applicant will not create a separate tract for the drainage facilities. He requested the hearings officer modify conditions 17 and 21 to that effect.

b. Mr. Jensen testified that there is a question about the depth of the existing sanitary sewer line on the site. The applicant may need to lower the sewer line to serve the proposed expansion, which may impact trees within the sensitive area. The applicant will restore the disturbed area and mitigate any impacts by planting additional vegetation on the site.

i. He testified that the applicant will collect stormwater runoff from impervious areas on the site, treat it in a bio-filtration swale to remove pollutants and discharge it onto the ground outside of the stream buffer, allowing the treated runoff to flow overland to the creek.

ii. He testified that the applicant will plant additional landscaping throughout the site to provide a buffer between the site and adjacent homes. The applicant will replace all of the existing parking lot lights with cut-off fixtures, which limit off-site glare.

c. Mr. Charbonneau testified that all affected intersections, including the proposed Gaarde Street driveway, will continue to operate at Level Of Service ("LOS") B or C with the proposed expansion. Sight distance is more than adequate, based on the 35 mph speed limit on Gaarde.

i. He testified that the Gaarde Street driveway will improve circulation and emergency access on the site. Elimination of the Gaarde Street driveway will create a roughly 700-foot long dead-end. Eliminating the Gaarde Street driveway will increase the traffic impact on the 110th Avenue/Gaarde Street intersection and the abutting neighborhood, because all of the traffic from the site will exit onto 110th Avenue.

d. Mr. Wilson testified that the applicant will not operate a school on the site. He testified that improvements to Gaarde Street made the existing Gaarde Street driveway unusable by emergency vehicles. The City proposed to "work with" the applicant to fix the problem when they developed the expansion. Now the City is denying any access to Gaarde Street.

4. Bruce Anderson testified in support of the applications. He argued that the applicant should be allowed to provide driveway access to Gaarde Street.

5. Julie Piesker expressed concern that closure of the Gaarde Street access will increase traffic volume and congestion on 110th Avenue. She noted that the 110th Avenue/Gaarde Street intersection is not signalized. She argued that the applicant could limit use of the Gaarde Street driveway to Sunday only.

6. Greg Herkner expressed concern that expansion of the parking lot will increase the amount of pollution entering the creek near the south boundary of the site. He objected to removal of the existing trees on the site. The trees buffer his home from lights, noise and other impacts generated on the site.

7. City engineer Kim McMillan testified that Gaarde Street is an arterial. The City requires a minimum 600 feet between intersections on arterials to avoid conflicting turn movements and to maintain traffic flow. Arterials are intended to carry through traffic at higher speeds. Additional access points conflict with that purpose and may create a hazard. The applicant has, or will have, two driveways onto 110th Avenue, which are adequate to serve the use. Although closure of the Gaarde Street driveway will increase traffic on 110th Avenue, traffic is generally limited to Sunday mornings. The City considered allowing a right-in/right-out only access onto Gaarde. However a median would conflict with the driveway serving the development across the street. In addition, such a driveway would still require an adjustment for which the applicant cannot meet the approval criteria. She testified that the City is required to restore existing driveways when it constructs street improvements. However the City can require closure of existing driveways as a condition of approval for new development.

8. City Planning Manager Dick Bewersdorff testified that City capital improvement staff failed to check with City engineering staff before they agreed to work with the applicant to relocate the existing Gaarde Street driveway. The Code does not allow the proposed Gaarde Street access and capital improvement staff have no authority to allow such access.

9. At the end of the hearing, the hearings officer ordered the public record held open for one week for the applicant to submit a closing argument. The record in this case closed at 5 PM on May 2, 2005.

C. DISCUSSION

1. City staff provided basic facts about the site and its vicinity and existing and proposed uses in the Staff Report. Ultimately they recommended that the hearings officer

approve the applications for the conditional use permit and sensitive lands reviews and deny the adjustment application. The applicant accepted most of the findings and recommended conditions with the exceptions described more below. The hearings officer adopts the findings and conclusions in the Staff Report as his own except to the extent they are inconsistent with the findings and discussion in this final order.

2. Regarding the conditional use permit, substantial evidence in the record shows that the proposed use does or can comply with the applicable standards for a conditional use permit. That evidence and those findings were not rebutted. The hearings officer relies on the Staff Report for relevant findings and citation to supporting evidence on these issues. The hearings officer is persuaded that the proposed use will not generate excessive noise, lights, pollution and other effects that cannot be adequately mitigated. These impacts can be accommodated considering the size, shape, location, topography and natural features of the site.

a. Parking, maneuvering and other activities occurring within the parking lot will generate some noise. However such impacts are short term, as vehicles enter and leave the site. In addition, the parking lot will be physically separated from abutting residential properties by the existing vegetative buffer along the stream. The applicant will plant additional vegetation within the buffer and throughout the site, which will enhance the existing buffer. See Plan Sheet L1. Therefore the hearings officer finds that activities in the parking lot are unlikely to have a significant adverse impact on surrounding residents.

b. The hearings officer finds that lights in the parking lot are unlikely to cause glare or adverse visual impacts off-site, because of the distance and vegetation between the light fixtures and residences. Excessive lighting can be addressed by conditions of approval that limit the level of lighting at the property line and require light fixtures to be designed, situated and/or supplemented so they do not cast significant off-sight glare. Also conditions can provide that lights not required for security purposes should be turned off when there are no scheduled activities at the temple. A condition of approval is warranted requiring lighting to be as described herein. It is feasible for the applicant to produce a final site plan showing light fixtures, specifications for fixtures and a lighting plan (including calculated light levels at the property line) to comply with such a condition. For purposes of this decision, lighting does not cause adverse impacts if it casts not more than one foot-candle at the property line or if it is shielded to prevent light from being cast away from the building on which it is situated or toward the east or southeast. Condition of approval 3 should be modified to that effect.

c. The proposed development will create additional paved parking areas located in close proximity to the creek. Stormwater flowing over these paved parking areas will pickup oil, sediment and other pollutants, which could contaminate the creek. However the applicant proposed to collect runoff from impervious areas and discharge it to a biofiltration swale, which will remove much of the pollutants. The applicant will discharge the treated runoff onto the ground, where it will flow over the ground and through additional vegetation, which will filter out additional pollutants before it reaches the creek.

d. There is no substantial evidence in the record that stormwater treatment and erosion control facilities will not function as designed or will cause pollution or sedimentation of adjacent properties or the creek. Neighbors' evidence about pollution from other sites is not relevant to this application. There is no evidence that similar conditions exist on the site or that failures will or are probable on this site.

e. The proposed church expansion will attract additional people to the immediate area, which may lead to an incremental increase the amount of litter, vandalism, and illegal activities. However the hearings officer finds that there is no substantial evidence in the record that members of the church are any more or less likely to engage in nuisance or illegal activities than other people or that such effects will result from the church.

3. The applicant requested an adjustment to the intersection spacing standards of TDC 18.705.030.H(3) to allow driveway access to Gaarde Street.

a. TDC 18.705.030.H(3) requires a minimum 600 feet between driveway and street intersections on arterials such as Gaarde Street. The applicant's existing Gaarde Street access is located roughly 80 feet from the intersection of SW 110th Avenue and SW Gaarde Street. The applicant proposed to close the existing access and construct a new driveway onto Gaarde Street located roughly 200 feet south of the 110th Avenue/SW Gaarde Street intersection.

b. TDC 18.370.020.C(5) authorizes the hearings officer to approve an adjustment to the intersection spacing requirements if the application complies with the approval criteria of TDC 18.370.020.C(5)(b). In this case the hearings officer finds that the applicant failed to bear the burden of proof that the application complies with TDC 18.370.020.C(5)(b)(2) and (4), because adequate alternative access is available to the site from SW 110th Avenue. Therefore the proposed adjustment cannot be approved, because it does not comply with the applicable approval criteria.

c. Prohibiting access to Gaarde Street will increase the traffic volume and congestion on 110th Avenue and the proposed site driveways, since all vehicles must use the driveways onto this street to enter and leave the site. The additional traffic and congestion will likely be perceptible to area residents and church members. but it will not exceed the capacity of streets or create a hazard based on Mr. Charbonneau's expert testimony. There is no substantial evidence to the contrary.

i. Mr. Charbonneau testified at the hearing that routing all of the traffic from the site will not exceed the capacity of the 110th Avenue/Gaarde Street intersection. In his April 27, 2005 Memorandum he testified that elimination of the Gaarde Street driveway will cause "several detriments..."² However he did not find that

² He testified that closure of the Gaarde Street driveway will cause "[a]dditional impacts to the [110th Avenue/Gaarde Street] intersection and 110th Avenue...longer delays in accessing the site...emergency vehicles will need to undertake a longer route... [and] the residential neighborhood...will experience additional traffic circulation and impacts."

those "detriments" will violate City standards or create a hazard. A mere increase in delay and congestion is not sufficient to support a finding that the alternative access is unavailable.

d. The proposed parking lot design without access to Gaarde Street will create a long dead-end parking lot and vehicle accessway. This dead-end access way could increase emergency response times and restrict emergency vehicle access to certain portions of the site, as Mr. Charbonneau noted in his April 27, 2005 Memorandum. Therefore the hearings officer finds that the applicant should be required to provide an emergency vehicle access to Gaarde Street if required by the Tualatin Valley Fire District. A condition of approval is warranted to that effect.

e. The fact that the Church will generate the majority of its traffic on Sundays, when traffic volumes on Gaarde Street are lower is irrelevant, because it does not relate to the applicable approval criteria in TDC 18.370.020.C(5)(b).

f. The existence of other driveways on Gaarde Street that do not meet the intersection spacing requirements is irrelevant. The City has no authority to close existing nonconforming driveways. However the City can require that the applicant close its existing driveway and bring the site into compliance with current standards as a condition of development approval.

4. The applicant is required to demonstrate that adequate sight distance is available at the intersection of 110th Avenue and Gaarde Street, based on the posted speed of 35 mph or the 85th percentile, whichever is greater. The applicant is required to modify the intersection if necessary to provide adequate sight distance. See conditions of approval 13 and 29. All of the traffic from the proposed development will travel through this intersection. Therefore the hearings officer finds that this condition is "[n]ecessary to ensure the use is compatible with other use in the vicinity, and that the impact of the proposed use on the surrounding uses and public facilities is minimized." TDC 18.330.030.B. Inadequate sight distance at this intersection will create a hazard and additional traffic generated by the proposed development will exacerbate the hazard. Therefore the applicant should be required to ensure that adequate sight distance is available.

5. The applicant is not required to provide a separate tract for the stormwater facility. The conditions of approval should be modified to that effect.

6. The hearings officer finds that the applicant should be allowed to modify the phasing sequence as proposed at the hearing, provided the applicant demonstrates that adequate parking and landscaping are provided for each phase.

D. CONCLUSIONS

The hearings officer concludes that the proposed conditional use permit and sensitive lands reviews do or can comply with the applicable approval criteria and standards of the Tigard Community Development Code, provided development that occurs after this decision complies with applicable local, state, and federal laws and with conditions of approval warranted to ensure such compliance occurs. The hearings officer further finds that the applicant failed to bear the burden of proof that the adjustment complies with the applicable approval criteria and must be denied.

E. DECISION

The hearings officer hereby denies VAR2005-00016 and approves CUP 2004-00005, SLR2005-00005 and SLR2005-00006 (Tigard First Baptist Church) as described herein, subject to the following conditions of approval:

CONDITIONS OF APPROVAL

THE FOLLOWING CONDITIONS SHALL BE SATISFIED PRIOR TO ANY SITE WORK (ISSUANCE OF THE SITE PERMIT):

The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: MORGAN TRACY 503-639-4171, EXT 2428. The cover letter shall clearly identify where in the submittal the required information is found:

1. Prior to any site work, the applicant shall revise the landscape plans to show:
 - A. Consistency between the proposed tree removal plan, site plan, and landscape plan with regard to tree removal and on site walkway locations.
 - B. Additional vegetative screening along the west side of the lower parking lot. Any plantings that are proposed in the drainageway buffer will need to be native species appropriate for the area, per CWS standards.
 - C. The extent of landscaping that will be provided for each phase. This is to assist inspection staff in determining when the landscape is complete prior to final inspection for each respective phase. Areas that will be graded or disturbed shall be replanted with groundcover to prevent erosion.
 - D. Trees in the parking lots and street trees as native species. The applicant shall consult with the City Forester to determine the species to be used.
2. Prior to any site work, the applicant shall revise the site/utility plans to show:
 - A. The water quality facility shall be redesigned with input from both the applicant's engineer and arborist, to establish a location that can accommodate the required treatment and detention, and maintain the existing trees.
 - B. Either a) revise the site plan to show no encroachments including structures, grading, or planted vegetation occurring in the existing pathway easement area or b) propose and construct a realigned pathway in a new easement location. If proposing a realignment, the applicant shall be responsible for obtaining any other required approvals, such as sensitive lands review and CWS sign off, if the pathway is in the drainageway area.
 - C. A note indicating the height of the masonry trash enclosure will be 6 feet minimum.
 - D. The parking lot will comply with the Oregon Uniform Building Code by providing seven (7) ADA accessible spaces. This number may be reduced to 6 if the total parking provided is fewer than 200 spaces. The applicant shall additionally demonstrate that the minimum parking is provided for each phase after the appropriate number of ADA spaces are provided.
 - E. The number of bicycle rack spaces to be provided in each location. A minimum of 14 spaces are required for phase 1 and 2, and 28 spaces are required at the completion of Phase 3.
 - F. An area for a loading area. Staff suggests that the area in the Phase 2 parking lot turnaround be shown for this purpose.

- G. The specific profile for the sewer line, as it passes through the sensitive area. The applicant will need to obtain explicit approval from CWS regarding the sewer line work in this area, or else revise their plan such that no work in the buffer is required. If work in the buffer area is allowed, alternate methods of constructing the line will be required to be explored to minimize or eliminate the need for tree removal before the city grants approval to remove these trees. Moreover, prior to removing any trees in the sensitive land area, a tree removal permit shall be obtained from the City.
3. Prior to any site work, the applicant shall submit a detailed lighting plan prepared or approved by a professional engineer or other qualified individual showing that the light fixtures on the site do not cast more than one foot-candle at the property lines abutting the site. Light fixtures shall be designed, situated and/or supplemented to prevent them from causing significant off-site glare. Lights shall comply with crime prevention requirements of the Tigard Development Code (TDC) Section 18.360.090(10).
4. Prior to any site work, the applicant shall submit a revised tree removal plan that clearly depicts the trees that will be removed and those that will be retained, and includes the following notations:
- A. The applicant shall notify the City Arborist when tree protection measures are in place so that he may verify that the measures will function properly prior to construction.
- B. If it is necessary to enter the tree protection zone at any time with equipment (trucks, bulldozers, etc.) the project arborist and City Forester must be notified before any entry occurs. Before entering the TPZ, the project arborist and City Forester shall determine the method by which entry can occur, along with any additional tree protection measures.
5. Prior to any site work, the applicant shall have the geotech engineer review and approve the construction plans for the City's review and approval.
6. Prior to any site work, the applicant shall provide evidence of all necessary approvals from US Army Corps of Engineers and the Division of State Lands. If no approvals are required, the applicant shall submit a letter stating the reasons why no approval is required.

The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-639-4171, EXT 2642. The cover letter shall clearly identify where in the submittal the required information is found:

7. Prior to issuance of a site permit, a Public Facility Improvement (PFI) permit is required for this project to cover half street improvements and any other work in the public right-of-way. Six (6) sets of detailed public improvement plans shall be submitted for review to the Engineering Department. NOTE: these plans are in addition to any drawings required by the Building Division and should only include sheets relevant to public improvements. Public Facility Improvement (PFI) permit plans shall conform to City of Tigard Public Improvement Design Standards, which are available at City Hall and the City's web page (www.ci.tigard.or.us).
8. The PFI permit plan submittal shall include the exact legal name, address and telephone number of the individual or corporate entity who will be designated as the "Permittee", and who will provide the financial assurance for the public

improvements. For example, specify if the entity is a corporation, limited partnership, LLC, etc. Also specify the state within which the entity is incorporated and provide the name of the corporate contact person. Failure to provide accurate information to the Engineering Department will delay processing of project documents.

9. The applicant shall provide a construction vehicle access and parking plan for approval by the City Engineer. The purpose of this plan is for parking and traffic control during the public improvement construction phase. All construction vehicle parking shall be provided on-site. No construction vehicles or equipment will be permitted to park on the adjoining residential public streets. Construction vehicles include the vehicles of any contractor or subcontractor involved in the construction of site improvements or buildings proposed by this application, and shall include the vehicles of all suppliers and employees associated with the project.
10. Additional right-of-way shall be dedicated to the Public along the frontage of Gaarde to increase the right-of-way to 38 feet from the centerline. The description shall be tied to the existing right-of-way centerline. The dedication document shall be on City forms. Instructions are available from the Engineering Department.
11. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, which indicate that they will construct a half-street improvement along the frontage of 110th Avenue. The improvements adjacent to this site shall include:
 - A. City standard pavement section for a local street from curb to centerline equal to 16 feet;
 - B. pavement tapers needed to tie the new improvement back into the existing edge of pavement shall be built beyond the site frontage;
 - C. concrete curb, or curb and gutter as needed;
 - D. storm drainage, including any off-site storm drainage necessary to convey surface and/or subsurface runoff;
 - E. 5 foot concrete sidewalk with a 5-foot planter strip;
 - F. street trees in the planter strip spaced per TDC requirements;
 - G. street striping;
 - H. streetlight layout by applicant's engineer, to be approved by City Engineer;
 - I. underground utilities;
 - J. street signs (if applicable);
 - K. driveway apron (if applicable); and
 - L. adjustments in vertical and/or horizontal alignment to construct SW 110th Avenue in a safe manner, as approved by the Engineering Department.
12. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, indicating that they will construct the following frontage improvements along SW Gaarde Street as a part of this project:
 - A. removal of the existing driveway, replacing it with curb and sidewalk;
 - B. street trees spaced per TDC requirements; and
 - C. streetlight layout by applicant's engineer, to be approved by City Engineer.
13. The applicant's engineer shall provide preliminary sight distance certification for the intersection of 110th Avenue and Gaarde Street, with a list of improvements required to meet the standard. The engineer shall use the posted speed of 35 mph or the 85th percentile, whichever is greater.

14. Sanitary sewer and storm drainage details shall be provided as part of the Public Facility Improvement (PFI) permit plans. A connection permit is required for the reconnection of the sewer lateral to the main after lowering the lateral.
15. The applicant's engineer shall revise stormwater detention and water quality calculations with the actual impervious surface areas as reflected on Sheet A1.
16. Any extension of public water lines shall be shown on the proposed Public Facility Improvement (PFI) permit construction drawings and shall be reviewed and approved by the City's Water Department, as a part of the Engineering Department plan review. **NOTE:** An estimated 12% of the water system costs must be on deposit with the Water Department prior to approval of the PFI permit plans from the Engineering Department and construction of public water lines.
17. The applicant shall provide an on-site water quality facility as required by Clean Water Services Design and Construction Standards (adopted by Resolution and Order No. 00-7). Final plans and calculations shall be submitted to the Engineering Department (Kim McMillan) for review and approval prior to issuance of the site permit. In addition, a proposed maintenance plan shall be submitted along with the plans and calculations for review and approval.
18. An erosion control plan shall be provided as part of the Public Facility Improvement (PFI) permit drawings. The plan shall conform to the "Erosion Prevention and Sediment Control Design and Planning Manual, February 2003 edition."
19. The applicant shall obtain a 1200-C General Permit issued by the City of Tigard pursuant to ORS 468.740 and the Federal Clean Water Act.

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED
PRIOR TO ISSUANCE OF THE BUILDING PERMIT.**

The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the **CURRENT PLANNING DIVISION, ATTN: MORGAN TRACY 503-639-4171, EXT 2428**. The cover letter shall clearly identify where in the submittal the required information is found:

20. Prior to issuance of building permits, the applicant/owner shall record a deed restriction to the effect that any existing tree greater than 12" diameter may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this decision should either die or be removed as a hazardous tree.
21. Prior to any site work, the area of the drainage facility must be clearly identified in the field with permanent fencing so as to insure no grading or material is placed in this area. Any fencing that is damaged during construction must be replaced prior to final building inspection.

The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the **ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-639-4171, EXT 2642**. The cover letter shall clearly identify where in the submittal the required information is found:

22. Prior to issuance of a building permit, the applicant shall pay an addressing fee. (STAFF CONTACT: Shirley Treat, Engineering).

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED
PRIOR TO A FINAL BUILDING INSPECTION:**

The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the **CURRENT PLANNING DIVISION, ATTN: MORGAN TRACY 503-639-4171, EXT 2428**. The cover letter shall clearly identify where in the submittal the required information is found:

23. Prior to the issuance of final occupancy on any building, the applicant must provide City staff with a letter indicating that all of the provisions of Clean Water Services service provider letter (#4097) have been complied with.
24. Prior to the issuance of final occupancy on any building, re-plant any area where vegetation has been removed as a result of grading in conformance with the Clean Water Services Standards.
25. The applicant shall comply with the protection measures prescribed by the City Arborist. The applicant shall provide the City Arborist with a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving.
26. Prior to final building inspection, the Project Arborist shall submit a final certification indicating the elements of the Tree Protection Plan were followed and that all remaining trees on the site are healthy, stable and viable in their modified growing environment.


The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the **ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-639-4171, EXT 2642**. The cover letter shall clearly identify where in the submittal the required information is found:

27. Prior to a final building inspection, the applicant shall complete the required public improvements, obtain conditional acceptance from the City, and provide a one-year maintenance assurance for said improvements.
28. Prior to final building inspection, the applicant shall provide the City with as-built drawings of the public improvements as follows: 1) 3 mil mylar, 2) a diskette of the as-builts in "DWG" format, if available; otherwise "DXF" will be acceptable, and 3) the as-built drawings shall be tied to the City's GPS network. The applicant's engineer shall provide the City with an electronic file with points for each structure (manholes, catch basins, water valves, hydrants and other water system features) in the development, and their respective X and Y State Plane Coordinates, referenced to NAD 83 (91).
29. The applicant's engineer shall provide final sight distance certification for the intersection of 110th Avenue/Gaarde Street and the driveways on 110th Avenue. Final sight distance certification will be required for the Phase 1 (existing) driveway on 110th Avenue and the intersection prior to final building inspection of Phase 1. Final sight distance certification will be required for the Phase 2 (proposed) driveway on 110th Avenue prior to final building inspection of Phase 2.
30. The existing driveway on Gaarde shall be removed prior to final inspection on Phase 1.

31. The applicant shall either place the existing overhead utility lines along SW 110th Avenue underground as a part of this project, or they shall pay the fee in-lieu of undergrounding. The fee shall be calculated by the frontage of the site that is parallel to the utility lines and will be \$35.00 per lineal foot. If the fee option is chosen, the amount will be \$21,000.00 and it shall be paid prior to final building inspection.
32. To ensure compliance with Clean Water Services design and construction standards, the applicant shall employ the design engineer responsible for the design and specifications of the private water quality facility to perform construction and visual observation of the water quality facility for compliance with the design and specifications. These inspections shall be made at significant stages, and at completion of the construction. Prior to final building inspection, the design engineer shall provide the City of Tigard (Inspection Supervisor) with written confirmation that the water quality facility is in compliance with the design and specifications. Staff Contact: Hap Watkins, Building Division.

FAILURE TO SATISFY THE CONDITIONS OF APPROVAL WITHIN 36 MONTHS OF THE EFFECTIVE DATE OF THE HEARINGS OFFICER'S DECISION SHALL RENDER THE HEARINGS OFFICER'S DECISION VOID.

DATED this 12th day of May, 2005.



Joe Turner, Esq., AICP
City of Tigard Land Use Hearings Officer